

HERMAN F. GIERKE, JR.

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JANUARY 31, 1956.—Committed to the Committee of the Whole House and ordered to be printed

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Mr. LANE, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany H. R. 3725]

The Committee on the Judiciary, to whom was referred the bill (H. R. 3725), for the relief of Herman F. Gierke, Jr., having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment is as follows:

On page 1, line 6, strike out the figure "\$3,550" and insert in lieu thereof "\$2,500.00".

### PURPOSE

The purpose of the proposed legislation, as amended, is to pay Herman F. Gierke, Jr., of Watford City, N. Dak., the sum of \$2,500 in full settlement of all claims against the United States for damages from the failure of the Corps of Engineers to replace certain fences, their failure to construct containment for livestock, and for their failure to construct certain road approaches as agreed in return for the grant of an easement by Mr. Gierke to the United States.

### STATEMENT OF FACTS

A system of relocated roads was constructed on the Fort Berthold Indian Reservation incident to the construction of the Garrison Dam and Reservoir project on the Missouri River in North Dakota. The Bureau of Indian Affairs of the Department of the Interior obtained an easement from Mr. Gierke as well as from other landowners for the necessary construction. As a part of the consideration for the easement the United States agreed to replace section line fences on both sides of the road. As stated in the report furnished to the committee by the Department of the Army, one side of the road right-of-way was open during the period of construction.

A full account of the damage suffered by Mr. Gierke is set forth in the following affidavits:

*To Whom It May Concern:*

R. A. Gierke, Mary C. Gierke, and H. F. Gierke maintain that the Corps of Engineers did knowingly violate every promise made in securing easement for road known as Route 19 across our land, described as the east half of section 22-149-94, McKenzie County, N. Dak.

They replaced a fence on the east side of the road but moved existing fence over on west side of road using our material. This was not the usual practice as new fences were built on both sides of the road immediately north of our land and on several other tracts where they crossed fenced land.

While several approaches were put in, they refused to put in the approaches we considered necessary to properly utilize our land which was split almost exactly in two by this road.

They deliberately dumped the drainage from approximately 2,000 acres on a 100-acre alfalfa field of ours. We have asked \$500 for damage to this field but \$5,000 would be nearer the actual damage and it will increase.

At no time did the Engineers make any attempt to give us the promised 100 percent containment. Our fence was thrown open and our land entered upon in the fall, and the fence that was supposed to be built before construction was started on our land, was not built until the following spring.

This containment clause was of vital importance as this land contained our winter's supply of hay in a country where your hay is the life of your herd and not replaceable. This land is a valley surrounded by several hundred thousand acres of land grazed by several thousand cattle.

After we had written said engineers numerous letters of protest, used our time, money, and car to chase them more than a thousand miles, we were sure the wrong was deliberate and they were going to do nothing to correct it.

We were forced to maintain a camp, horse, and rider to protect our hay. No one can maintain a camp, horse, and rider for \$10 per day.

Bear in mind that this right-of-way was given to the Government by us absolutely free and that it was not wild cheap land but valuable valley soil, every foot of it.

(Signed) R. A. GIERKE,  
MARY C. GIERKE,  
H. F. GIERKE, Jr.

On this 9th day of December appeared before me, L. M. Stenehjem, a notary public in and for McKenzie County, N. Dak., R. A. Gierke, Mary C. Gierke, and H. F. Gierke, known to me as the persons executing this document.

[SEAL]

L. M. STENEHJEM,  
Notary Public, McKenzie County, N. Dak.

My commission expires August 17, 1956.

*To Whom It May Concern:*

During the winter of 1952-53, it was necessary for R. A. Gierke, Mary C. Gierke, and H. F. Gierke, Jr., to maintain a camp and rider on the reservation to protect their hay located on the east half of section 22-149-97, McKenzie County. This was due to the fact that the road known as Route 19 was open all winter through said land and, inasmuch as there were no car passes installed, the fences were also left open.

(Signed) MARTHA HEIM,  
LLOYD WHERLEY,  
ART JORE.

On this 9th day of December before me, L. M. Stenehjem, a notary public, appeared Martha Heim, Lloyd Wherley, and Art Jore, known to me as the persons described in and who executed the within instrument and acknowledged to me that they executed the same.

[SEAL]

L. M. STENEHJEM,  
Notary Public, McKenzie County, N. Dak.

My commission expires August 17, 1956.

*To Whom It May Concern:*

In the year of 1952, R. A. Gierke, Mary C. Gierke, and H. F. Gierke, Jr. (joint owners), gave to the United States a certain right-of-way for road now known as Route 19 across the west half of section 22, township 149, range 94, in McKenzie County, N. Dak. There was absolutely no charge for the above easement by R. A. Gierke, Mary C. Gierke, or H. F. Gierke, Jr. However, the United States did agree to replace fence on both sides of said Route 19, to build what approaches deemed necessary by the owners of the land, as this road split 640 acres of land owned by R. A. Gierke, Mary C. Gierke, and H. F. Gierke, and to give the owners of said land 100 percent containment at all times.

This easement was secured by Mr. Ralph Shane, road engineer, United States Indian Service.

RALPH M. SHANE,

Subscribed and sworn to before me this 5th day of December 1955.

[SEAL]

L. C. HUNGATE,

*Notary Public, Mountrail County, N. Dak.*

My commission expires December 6, 1960.

A careful consideration of the items of damage outlined in these affidavits leads this committee to the conclusion that Mr. Gierke has suffered damage in excess of the amount of \$1,550, the amount that the Army has indicated as a sum as to which it would interpose no objection. It is clear that the failure on the part of the Army engineers to comply with their explicit understanding concerning containment has resulted in serious damage to Mr. Gierke. Therefore the committee recommends that the bill be amended by reducing the amount to be paid Mr. Gierke from \$3,550 to \$2,500, and that the bill amended in this manner be favorably considered.

The report of the Department of the Army is as follows:

DEPARTMENT OF THE ARMY,  
*Washington 25, D. C., July 12, 1955.*

HON. EMANUEL CELLER,

*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H. R. 3725, 84th Congress, a bill for the relief of Herman F. Gierke, Jr.

The Department of the Army has considered the above-mentioned bill and would have no objection to its enactment, provided it is amended as hereinafter recommended.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Herman F. Gierke, Junior, of Watford City, North Dakota, the sum of \$3,550. The payment of such sum shall be in full settlement of all claims of Herman F. Gierke, Junior, against the United States for damages resulting from the failure of the Corps of Engineers to replace certain fences, for their failure to construct containment for livestock, and for their failure to construct certain road approaches which they agreed to do in return for an easement granted by Herman F. Gierke, Junior, to the United States."

The system of relocated roads was constructed on the Fort Berthold Indian Reservation incident to the construction of the Garrison Dam and Reservoir project on the Missouri River in North Dakota. The Department of the Interior and the Department of the Army coordinated closely in an effort to minimize inconvenience to landowners and assure their full compensation for any damage done. As a part thereof, the Bureau of Indian Affairs, Department of the Interior, obtained an easement from Mr. Gierke, among others, for the necessary construction and the Department of the Army, acting through the Chief of Engineers, accomplished the actual construction work. As part of the consideration for the grant of easement, the United States agreed that it would replace section line fences on both sides of the road. Although there was no time limit within which such replacement would be effected, and the fence was actually moved

when construction was completed, one side of the road right-of-way was open during the period of construction, forming the basis of the alleged damage.

The records of the Department of the Army show that prior to the commencement of the construction work in 1952, the claimant had a fence along the line which became the centerline of the right-of-way for the new highway across his land. This fence was reset on one side of the roadway prior to the time that work was suspended for the winter of 1952. Temporary, and possibly makeshift, fences were established in an effort to provide full containment. As a result of the incomplete replacement of fences, however, Mr. Gierke claims that stacks of hay were destroyed by trespassing livestock. The records of the Department of the Army further disclose that on May 27, 1953, Mr. Gierke presented a written claim to the Department of the Army for \$1,550 based on \$240 for property damage consisting of the destruction of 8 tons of hay at \$30 per ton, and \$1,310 representing additional expenses in the operation of his ranch, by reason of retention of an added hired hand, with horse, to protect his property, exposed for lack of fencing, during the period November 20, 1952, to April 1, 1953. The claim was duly considered within administrative procedures as prescribed by the Department of the Army and disallowed. There is no information in the records and files of the Department indicating any claim in excess of \$1,550 except that, after the claim was disallowed, Mr. Gierke stated that that amount did not constitute all of his alleged damage.

Although the easement did not establish a time limit within which the replacement fencing was to be accomplished, and the fencing was completed in what can be considered a reasonable time, there is evidence to indicate that it was necessary for Mr. Gierke to supplement the measures taken by the Department of the Army for the protection of his property during the course of construction. In addition, it has been shown that some damage was caused to the claimant's property during that period. The amounts indicated above represent damage to hay and cost of additional help, and are considered reasonable.

In view of the circumstances of this particular case, the Department of the Army will interpose no objection to the enactment of H. R. 3725 if the amount proposed for payment to Herman F. Gierke, Jr., is reduced from \$3,550 to \$1,550.

The enactment of the bill in its present form would involve Federal expenditures in the amount of \$3,550 or, as amended, the reduced amount of \$1,550.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

ROBERT T. STEVENS;  
*Secretary of the Army.*